

1 STOEL RIVES LLP
David B. Levant
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3 Seattle, Washington 98101
Telephone: (206) 624-0900
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5 eleliassen@stoel.com

6 LATHAM & WATKINS LLP
Peter M. Gilhuly (*admitted pro hac vice*)
7 Wayne S. Flick (*admitted pro hac vice*)
Ted A. Dillman (*admitted pro hac vice*)
8 355 South Grand Avenue
Los Angeles, California 90071-1560
9 Telephone: (213) 485-1234
Facsimile: (213) 891-8763
10 peter.gilhuly@lw.com
wayne.s.flick@lw.com
11 ted.dillman@lw.com

12 Attorneys for General Electric Capital Corporation

13
14 IN THE UNITED STATES BANKRUPTCY COURT
15 EASTERN DISTRICT OF WASHINGTON

16 In re
17 CENTURION PROPERTIES III,
LLC
18 Debtor and Debtor-in-Possession.

Chapter 11

Case No. 10-04024-FLK 11

**DECLARATION OF DAVID B.
LEVANT IN SUPPORT OF GENERAL
ELECTRIC CAPITAL
CORPORATION'S MOTION TO
COMPEL**

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1 **DECLARATION OF DAVID B. LEVANT**

2 I, David B. Levant, hereby declare as follows:

3 1. I am an attorney at law, duly licensed to practice before the
4 United States District Court for the Eastern District of Washington. I am a partner
5 with the firm of Stoel Rives LLP ("**Stoel**"), and counsel for General Electric
6 Capital Corporation ("**GECC**"). I have first hand knowledge of the facts set forth
7 herein and if called as a witness could and would testify competently thereto.

8 2. I submit this Declaration in support of GECC's Motion to
9 Compel Debtor to Permit Entry Upon Land, filed concurrently herewith
10 (the "**Motion**").

11 3. Attached as **Exhibit A** to this declaration is a true and correct
12 copy of the First Request for Entry Upon Land Propounded on Debtor by General
13 Electric Capital Corporation, which was served on the Debtor by electronic mail on
14 May 11, 2011.

15 4. Attached as **Exhibit B** to this declaration is a true and correct
16 copy of the Objection to General Electric Capital Corporation's First Request for
17 Entry Upon Land Propounded on Debtor, which was served on GECC by
18 electronic mail on May 13, 2011.

19 5. Attached as **Exhibit C** to this declaration, is a true and correct
20 copy of an e-mail sent on May 11, 2011 from Wayne Flick, a partner at Latham &
21 Watkins LLP ("**Latham**") and counsel for GECC, to John Munding, counsel to the
22 Debtor.

23 6. Attached as **Exhibit D** to this declaration is a true and correct
24 copy of an e-mail sent on May 13, 2011 from Wayne Flick to John Munding in
25 response to the Debtor's Objection to GECC's Request.

26 7. Attached as **Exhibit E** to this declaration is a true and correct
27 copy of an e-mail sent on May 16, 2011 from John Munding to Wayne Flick
28 responding to Mr. Flick's May 13, 2011 e-mail which is attached as Exhibit D to

1 this declaration.

2 I declare under penalty of perjury under the laws of the United States
3 of America that the foregoing is true and correct, and that this declaration was
4 executed on May 16, 2011, at Seattle, Washington.

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6 /s/ David B. Levant
7 David B. Levant
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EXHIBIT A

1 STOEL RIVES LLP
2 David B. Levant
3 Erin L. Eliassen
4 600 University Street, Suite 3600
5 Seattle, Washington 98101
6 Telephone: (206) 624-0900
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8 dblevant@stoel.com
9 eleliassen@stoel.com

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15 wayne.s.flick@lw.com
16 ted.dillman@lw.com

12 Attorneys for General Electric Capital Corporation

13
14 IN THE UNITED STATES BANKRUPTCY COURT
15 EASTERN DISTRICT OF WASHINGTON

16 In re

17 CENTURION PROPERTIES III,
18 LLC

19 Debtor and Debtor-in-Possession.

Chapter 11

Case No. 10-04024-FLK 11

**FIRST REQUEST FOR ENTRY UPON
LAND PROPOUNDED ON DEBTOR BY
GENERAL ELECTRIC CAPITAL
CORPORATION**

22 **PROPOUNDING PARTY: GENERAL ELECTRIC CAPITAL
23 CORPORATION**

24 **RESPONDING PARTY: DEBTOR**

25 **SET NO.: ONE**

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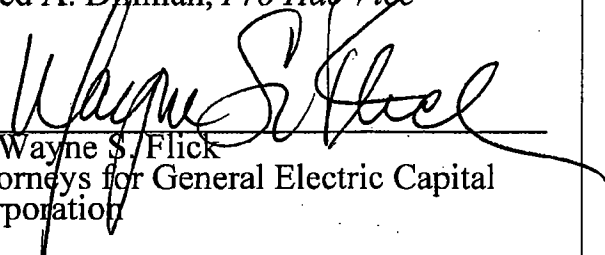
1 Pursuant to Federal Rules of Civil Procedure 26 and 34 as incorporated by
2 Federal Rules of Bankruptcy Procedure 7026 and 7034 and the Stipulation
3 Regarding Schedule for Discovery, Briefing and Pretrial Matters Pertaining to
4 General Electric Capital Corporation's Motion for Relief from the Automatic Stay
5 [Docket No. 267], in connection with its Motion for Relief from the Automatic
6 Stay Pursuant to 11 U.S.C. § 362(d), Federal Rule of Bankruptcy Procedure 4001
7 and Local Bankruptcy Rule 4001-1 [Docket No. 219] (the "Motion"), General
8 Electric Capital Corporation ("GECC") hereby requests that the above-captioned
9 debtor and debtor-in-possession ("Debtor") permit entry upon the premises of the
10 Battelle Memorial Institute Campus ("Battelle"), located at 3200-3350 Q Avenue
11 and 620 Battelle Boulevard, Richland, WA 99354, for the purpose of permitting
12 the inspection of said premises by one of GECC's potential experts in this matter.

13 The individual inspecting the premises may inspect, measure, survey,
14 photograph, video tape, test or otherwise sample the above-identified premises
15 during the course of the inspection. Further, the individual inspecting the premises
16 may observe, question and interview individuals residing at or employed by
17 Battelle. Further, the individual inspecting the premises may inspect, review and
18 photocopy relevant and discoverable documents located at Battelle.

19 GECC requests that the Debtor make the above-identified property available
20 for inspection commencing at 1:00 p.m. on one of the following dates: May 19,
21 2011, May 20, 2011, May 30, 2011 or May 31, 2011. The inspection will continue
22 as needed to allow GECC's potential expert sufficient time to conduct his
23 investigation, interviews, and facility review.
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1 Dated: May 11, 2011

LATHAM & WATKINS LLP
Peter M. Gilhuly, *Pro Hac Vice*
Wayne S. Flick, *Pro Hac Vice*
Ted A. Dillman, *Pro Hac Vice*

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3
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5 By 
Wayne S. Flick
6 Attorneys for General Electric Capital
Corporation
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Ave., Los Angeles, CA 90071-1560.

On May 11, 2011, I served the following document described as:

**FIRST REQUEST FOR ENTRY UPON LAND PROPOUNDED ON DEBTOR BY
GENERAL ELECTRIC CAPITAL CORPORATION**

by serving a true copy of the above-described document in the following manner:

BY ELECTRONIC MAIL

I caused a pdf version of the above-described document to be transmitted to the following parties from Los Angeles, California on May 11, 2011:

John D Munding
Crumb & Munding
Davenport Tower, PH 2290
111 S. Post Street
Spokane, WA 99201
munding@crumb-munding.com

I affirm that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and affirm under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 11, 2011, at Los Angeles, California.

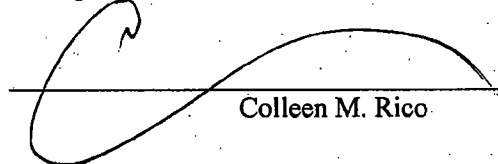

Colleen M. Rico

EXHIBIT B

1 JOHN D. MUNDING
2 CRUMB & MUNDING, P.S.
3 The Davenport Tower, PH 2290
4 111 S. Post Street
5 Spokane, WA 99201
6 509-624-6464
7 munding@crumb-munding.com

8
9 Attorneys for Debtor.

10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF WASHINGTON

12 In re

No. 10-04024-FLK 11

13 Centurion Properties III, LLC

Chapter 11

14 Debtor

15 **OBJECTION TO GENERAL**
16 **ELECTRIC CAPITAL**
17 **CORPORATION'S FIRST**
18 **REQUEST FOR ENTRY UPON**
19 **LAND PROPOUNDED ON**
20 **DEBTOR**

21 **I. OBJECTIONS**

22 Debtor, Centurion Properties III, LLC, by and through its attorney John D.
23 Munding with Crumb & Munding, PS, hereby **OBJECTS** to General Electric
24 Capital Corporation's Request for Entry upon Land Propounded to the Debtor and
25 opposes the discovery request. More specifically, Centurion Properties III, LLC,
26

OBJECTION TO GECC'S FIRST REQUEST FOR
ENTRY UPON LAND PROPOUNDED ON DEBTOR- 1

CRUMB & MUNDING, P.S.
THE DAVENPORT TOWER
111 S. POST STREET, PH 2290
SPOKANE, WA 99201
(509) 624-6464
FAX (509) 624-6155

1 objects on the basis set forth below.

2 II. BASIS

3
4 Centurion Properties III, LLC's objection is based upon the following:

- 5 1. General Electric Capital Corporation ("GECC") has already commissioned
6 and received at least one recent, independent, and comprehensive appraisal
7 on the Battelle property. Furthermore, GECC has commissioned at least two
8 appraisers in the last eight months who have made site visits to the property.
9 In the fall of 2010, GECC requested, demanded, and was provided with
10 complete access for its appraiser, Mr. Robert Taylor of Cushman &
11 Wakefield, to conduct a site visit. In February of 2011, GECC switched
12 appraisal firms and demanded a second site visit and walk-through by its
13 new appraiser, Peter K. Shorett of Kidder Mathews. Access to the property
14 was provided on March 25, 2011, to Mr. Peter K. Shorett and Ms. Katherine
15 Samson of Kidder Mathews, as well as Mr. Sebastian Perin of GECC. The
16 results of the appraisal also disclosed that Kidder Mathews previously
17 conducted a comprehensive appraisal of the Battelle property on July 21,
18 2009. That 2009 appraisal has not been produced by Kidder Mathews or
19 GECC and the content remains unknown.
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25 2. The 2011 appraisal provided GECC with extensive information and photos
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1 regarding the nature, quality, and value of the Battelle property and the
2 facilities located thereon. A third site inspection will not provide GECC
3 with any new information, especially since GECC was granted full access to
4 inspect the property less than two months ago. Further, on April 8, 2011,
5 GECC moved for relief from the bankruptcy stay. In support of its motion,
6 GECC offered the declaration and recent appraisal of Mr. Peter K. Shorett.
7
8

- 9 3. GECC's request to access any and all records located at the Battelle property
10 is overbroad and burdensome since discovery is limited to relevant, non-
11 privileged information. The language of GECC's broad request enables
12 GECC to access any document before a determination is made that the
13 document is relevant and not privileged. In fact, GECC's request permits its
14 representative to make a unilateral determination as to what documents are
15 relevant and/or privileged. The issue of privilege is especially concerning
16 here because Battelle manages the Pacific Northwest National Laboratory
17 ("PNNL") on behalf of the United States Departments of Energy, Defense,
18 and Homeland Security. Since PNNL is home to significant testing,
19 research, and development, the Battelle property contains extensive
20 proprietary and confidential information. Not only is the information largely
21 classified, but Centurion Properties III, LLC, as landlord, cannot grant
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1 anyone, including GECC, access to its tenant's records. Finally, GECC
2 proposed four alternative dates to enter the Battelle property. The proposed
3 dates coincide with dates that Mr. Michael Henry, representative of
4 Centurion Properties III, LLC, is out of town being deposed.

5
6 4. GECC's request for access to observe, question, and interview witnesses
7 residing or employed at the Battelle property is not only overbroad, but also
8 improper. This part of the request is particularly onerous for two reasons.
9 First, since Battelle is a sub-contractor for the United States Government, the
10 knowledge and conduct of its employees is largely confidential. Further,
11 since Battelle employees oversee research and testing of national
12 importance, the facility is strictly controlled for financial and safety
13 purposes. For example, Battelle prohibits all photography, video, or
14 recording of any kind inside the facilities. Moreover, there are offices at the
15 facility dedicated solely to classified work for the United States Departments
16 of Defense and Homeland Security. GECC's request for unlimited access to
17 Battelle's facilities and employees is unreasonable and offensive to the
18 integrity of Battelle and PNNL, and the request should be denied.
19

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21 5. The information sought in GECC's discovery request is not listed with
22 particularity. A discovery request must set forth each item or category of
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1 items to be inspected and describe each item or category with reasonable
2 particularity. Although the GECC request identifies the address of the
3 property, it does not list what information is sought from potential witnesses
4 or from the proposed records search. Instead, GECC provides itself with
5 free access to witnesses and information without identifying the item or
6 category of items sought and without a showing of relevance or need.
7

- 8
9 6. As stated above, GECC already possesses extensive information concerning
10 the Battelle property by way of the 2009 Kidder Mathews appraisal, 2010
11 site visit by Cushman & Wakefield, and 2011 Kidder Mathews appraisal.
12
13 GECC has already presented its best evidence to the Court.

14
15 **III. RELIEF REQUESTED**

16 Wherefore, Centurion Properties III, LLC respectfully requests that the Court
17 deny GECC's Request For Entry Upon Land Propounded by Debtor.
18

19
20 DATED this 13th day of May, 2011.

21
22 CRUMB & MUNDING, P.S.

23
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25 
26 JOHN D. MUNDING, WSBA #21734
Attorneys for Debtor

EXHIBIT C

From: Flick, Wayne (LA)
Sent: Wednesday, May 11, 2011 9:05 AM
To: 'John Munding'
Cc: Kronstadt, Jessica (LA); Quartarolo, Amy (LA)
Subject: Site Tour

Importance: High

John,

One of our experts would like to do a tour of the Property. He has provided four dates:

May 19
May 20
May 30 (This is Memorial Day, so it may not be workable)
May 31

Given flight times, he would need to do the tour at 1:00 on any of these days. He would need approximately one hour, and a facilities manager (or his or her designee) would be a suitable guide.

Please advise at your earliest convenience so we can make travel plans.
If you require a formal discovery request, we will serve one later today.

Many thanks.
wsf

Wayne S. Flick
LATHAM & WATKINS LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Main Tel: (213) 485-1234
Direct Dial: (213) 891-8755
Main Fax: (213) 891-8763
Private Fax: (213) 891-8872
Mobile: (323) 251-5522
E-mail: wayne.s.flick@lw.com
www.lw.com

EXHIBIT D

From: Flick, Wayne (LA)
Sent: Friday, May 13, 2011 5:23 PM
To: 'Ashley M. Woods'; munding@crumb-munding.com
Cc: Quartarolo, Amy (LA); Kronstadt, Jessica (LA); Gilhuly, Peter (LA); Dillman, Ted (LA); nli@winstoncashatt.com; cmr@winstoncashatt.com; eleliassen@stoel.com; dblevant@stoel.com
Subject: RE: Centurion Properties III, LLC: Discovery

John,

We have reviewed the Debtor's objection to GCC's Rule 34 request for entry upon land. We respectfully disagree with the Debtors' position and write to confer with you. If we cannot resolve the matter promptly, then we will have no choice but to ask the Court to set a prompt telephonic conference.

As you know, rather than set a date certain for the site visit, we provided four alternatives. The Debtor not only has rejected all of them, but has offered no alternative. Given that the existing discovery and hearing schedule has been designed in large part to accommodate the Debtor's delay in beginning its own appraisal process, it is unreasonable for the Debtor simultaneously to seek to preclude GECC from taking discovery in May (which is authorized by the Scheduling Stipulation and Order).

Previous property visits by other potential GECC experts are irrelevant. The present request relates to a different expert and the question is whether it imposes an undue burden on the Debtor. Plainly, it does not. The requested visit will last only approximately one hour, and your attendance is unnecessary. GECC plans to send no counsel. Surely, the Debtor can locate one employee on the property who can set aside one hour on one of four dates in the next two weeks to provide GECC's expert access.

As for the standard provisions in the Rule 34 request relating to the possible asking of questions or the inspection of documents, GECC hereby agrees that its expert will do neither during the requested visit.

Please let us know immediately if the Debtor will agree to permit a brief site visit on one of the four proposed dates.

Many thanks.
wsf

From: Ashley M. Woods [mailto:ashley@crumb-munding.com]
Sent: Friday, May 13, 2011 4:19 PM
To: Flick, Wayne (LA); Gilhuly, Peter (LA); Dillman, Ted (LA); nli@winstoncashatt.com; cmr@winstoncashatt.com; eleliassen@stoel.com; dblevant@stoel.com
Cc: munding@crumb-munding.com; Quartarolo, Amy (LA); Kronstadt, Jessica (LA)
Subject: RE: Centurion Properties III, LLC: Discovery

Dear Counsel,

My apologies. Due to an inadvertent error, pages 2-3 were missing from the Objection. Please find attached the Objection to General Electric Capital Corporation's First Request for Entry Upon Land Propounded on Debtor in its entirety.

Thank you for bringing this matter to my attention.

Sincere Thanks,

Ashley M. Woods

John D. Munding of
Crumb & Munding, P.S.
The Davenport Tower
111 South Post, penthouse 2290
Spokane, WA 99201
T 509.624.6464
F 509.624.6155

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From: wayne.s.flick@lw.com [mailto:wayne.s.flick@lw.com]
Sent: Friday, May 13, 2011 4:09 PM
To: ashley@crumb-munding.com; PETER.GILHULY@lw.com; Ted.Dillman@lw.com; nli@winstoncashatt.com; cmr@winstoncashatt.com; elieliasen@stoel.com; dblevant@stoel.com
Cc: munding@crumb-munding.com; Amy.Quartarolo@lw.com; Jessica.Kronstadt@lw.com
Subject: RE: Centurion Properties III, LLC: Discovery

Could we please get the missing pages to the Objection?

From: Ashley M. Woods [mailto:ashley@crumb-munding.com]
Sent: Friday, May 13, 2011 4:07 PM
To: Flick, Wayne (LA); Gilhuly, Peter (LA); Dillman, Ted (LA); nli@winstoncashatt.com; cmr@winstoncashatt.com; elieliasen@stoel.com; dblevant@stoel.com
Cc: 'John Munding'
Subject: Centurion Properties III, LLC: Discovery

Dear Counsel,

Please find attached a letter of correspondence from Mr. Munding, with the following enclosures:

- Plaintiff's First Set of Interrogatories and Requests for Production to General Electric Capital Corporation
- Objection to General Electric Capital Corporation's First Request for Entry Upon Land Propounded on Debtor

Should you have any questions, or would like to view the First Set of Interrogatories and Requests for Production in Word Format, please do not hesitate to call or email.

Sincere Thanks,

Ashley M. Woods

John D. Munding of
Crumb & Munding, P.S.

The Davenport Tower
111 South Post, penthouse 2290
Spokane, WA 99201
T 509.624.6464
F 509.624.6155

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For more information please go to <http://www.lw.com/docs/irs.pdf>

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Latham & Watkins LLP

EXHIBIT E

From: John Munding [munding@crumb-munding.com]
Sent: Monday, May 16, 2011 10:38 AM
To: Flick, Wayne (LA); ashley@crumb-munding.com
Cc: Quartarolo, Amy (LA); Kronstadt, Jessica (LA); Gilhuly, Peter (LA); Dillman, Ted (LA); nli@winstoncashatt.com; cmr@winstoncashatt.com; eleliassen@stoel.com; dblevant@stoel.com
Subject: RE: Centurion Properties III, LLC: Discovery

Wayne:

I disagree with your conclusions. GECC was provided ample opportunity to inspect the property, as reflected in Mr. Shorett's declaration. No additional experts have been disclosed. Regardless, the next two weeks are jammed with depositions of material witnesses, and a mediation before Judge Hogan. Your proposed time table is not realistic under the circumstances.

However, GECC is invited and encouraged to participate in the mediation set for May 26 and 27 at Spokane.

John D. Munding
Crumb & Munding, P.S.
509-624-6464

From: wayne.s.flick@lw.com [mailto:wayne.s.flick@lw.com]
Sent: Friday, May 13, 2011 5:23 PM
To: ashley@crumb-munding.com; munding@crumb-munding.com
Cc: Amy.Quartarolo@lw.com; Jessica.Kronstadt@lw.com; PETER.GILHULY@lw.com; Ted.Dillman@lw.com; nli@winstoncashatt.com; cmr@winstoncashatt.com; eleliassen@stoel.com; dblevant@stoel.com
Subject: RE: Centurion Properties III, LLC: Discovery

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wsf